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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/090,570 | 03/05/2002 | Peter Wu | P-1165 | 4995 |

7590

10/04/2004¹

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EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,570

Applicant(s)

WU ET AL.

Examiner

Tam Nguyen

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On

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heartbeat sensor and the microprocessor with built-in software of claims 3, 6 and 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 6 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3, 6, and 9 each recite the limitation "the personal heartbeat parameter" in line 3 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Van De Laarschot et al. (6,790,163).

As to claims 1, 2, 4 and 5, Van De Laarschot et al. disclose an exercise device comprising a magnetic resistance device (150), a manually adjustable resistance device (138,142,146), pulley elements, a plurality of pulleys (170) and grips (172), and a automatic coiling apparatus (108) as substantially claimed (see Figs. 1, 2, 6, ABSTRACT & Col. 6, lines 64+, Col. 6, lines 15-32 and Col. 8, lines 58+).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van De Laarsschot et al. (6,790,163) in view of ehrenfield (4,848,737).

As to claims 3 and 6, Van De Laarsschot et al. disclose an exercise device as substantially claimed. Van De Laarsschot et al. do not disclose a heartbeat sensor and a microprocessor with built-in software that adjusts the exercise resistance depending on the heartbeat of the user. Ehrenfield discloses an exercise device that includes a sensor and microprocessor that adjust the resistance of the exercise device depending on the heart rate of the user (see ABSTRACT). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add a sensor and microprocessor to monitor a user's heart rate and correspondingly adjust the resistance to Van De Laarschot's device since the practice of adding such devices to exercise equipment is well known in the art and it would provide the user with useful performance monitoring information during the workout.

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street (4,625,962).

As to claims 7 and 8, Street discloses an exercise device comprising frames (10'), an adjustable cushion (134), an upright post (14'), a resistance means that is

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manually adjustable (50), pulley elements, a plurality of pulleys (80', 82'), grips (76) and an automatic coiling apparatus (92) as substantially claimed (see Figs. 2-6). Street does not disclose that the resistance device is an electronically controlled magnetic means. The Examiner takes Official Notice that the prior art includes exercise devices having electronically controlled magnetic resistance means that affect flywheel rotation. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Street's frictional drag-strip resistance means with a magnetic means since both resistance means are considered to be functionally equivalent in the exercise art and are thus interchangeable.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Street (4,624,962) in view of Ehrenfield (4,848,737).

As to claim 9, Street discloses an exercise device as substantially claimed, but not a heartbeat sensor and a microprocessor with built-in software that adjusts the exercise resistance depending on the heartbeat of the user. Ehrenfield discloses an exercise device that includes a sensor and microprocessor that adjust the resistance of the exercise device depending on the heart rate of the user (see ABSTRACT). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add a sensor and Street's device since the practice of adding such devices to exercise equipment is well known in the art and it would provide the user with useful performance monitoring information during the workout.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shyu '337, Oglesby et al. '482, Watterson et al. '725, Abbondanza '239, Watterson et al. '710 are representative of the prior art that discloses exercise devices having resistance means that are adjusted subsequent to receiving pulse or heart rate readings from the user.

Spagnuolo et al. '089, Sleamaker '251 and Jungerwirth '237 each disclose exercise devices wherein the resistance is affected by readings from monitors and sensors connected to the body.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 24, 2004

A handwritten signature in black ink, appearing to read 'N. Lucchesi', with a long horizontal flourish extending to the right.

**NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**